

No. HM-59; Notice No. 70-18 (35 F.R. 16005), proposing to amend the regulations as stated above. No objections were received to the basic proposal, but two commenters objected to certain elements. Several others suggested some editorial changes, of which most were adopted.

One commenter objected to the specificity of the requirement for taper-threaded connections of valves to cylinders, noting the Board's announced intention of striving for performance standards. Another objected to the limitation for the gas pressure at 130° F. to not exceed the service pressure of the cylinder, and to the 6-foot boxed drop test. Both commenters referred to good experience in the shipment of gases in general, under conditions other than were proposed to be required for class A poison liquids and gases. The Board acknowledges that the proposals it made impose more specific and limiting conditions for class A poison shipments. It did so on the basis that the hazard level of a material should be a primary factor in specifying packaging. Consistent with this philosophy, its proposal intended to provide a better package than currently required for nonpoisonous gases or liquids that are otherwise regulated. Also, the proposal generally reflected packaging standards that have been in use for several years under the terms of many special permits. The permit experience has been completely satisfactory and, according to the comments received by one holder of such a permit and an association representing the majority of shippers of class A poisons who hold such permits, implementation of the proposal was recommended.

Editorial changes are being made to insure completeness and consistency between §§ 173.34, 173.327, and 173.328. For example, the sentence "Safety relief devices are forbidden" is being deleted in § 173.327(a), since this is already covered by § 173.34(d)(3); reference to § 173.301(g) is being deleted, as § 173.327 is complete in itself.

In consideration of the foregoing, 49 CFR Part 173 is amended as follows:

In § 173.327, paragraph (a) is amended to read as follows:

§ 173.327 Packing.

(a) Cylinders must be maintained in compliance with the requirements of § 173.34. Valves must be capable of withstanding the test pressure of the cylinders and must have taper-threaded connections directly to the cylinders (no bushings or straight-threaded connections of valves to cylinders permitted). For corrosive commodities, valves may be of the packed type provided the assembly is made gas-tight by means of a seal cap with compatible gasketed joint to the valve body or to the cylinder to prevent loss of commodity through or past the packing; otherwise the valves must be of the packless type

with nonperforated diaphragms and handwheels. Each valve outlet must be sealed by a threaded cap or a threaded solid plug. The outlet caps and plugs, luting, and gaskets must be compatible with each other, the valve assembly, and the lading.

(1) The pressure of the poison gas at 130° F. must not exceed the service pressure of the cylinder. Cylinders must not be liquid full at 130° F.

(2) Cylinders packed in boxes must have adequate protection for valves. Box and valve protection must be of strength sufficient to protect all parts of cylinders and valves from deformation or breakage resulting from a drop of at least 6 feet onto a concrete floor, impacting at the weakest point. A cylinder not overpacked in a box must be equipped with a protective cap or other means of valve protection which must be capable of preventing damage to or distortion of the valve if it were subjected to an impact test as follows: The cylinder, prepared as for shipment, is allowed to fall from an upright position with the side of the cap or other valve protection striking a solid steel object projecting not more than 6 inches above the floor level.

* * * * *
In § 173.328, paragraph (a)(2) is added to read as follows:

§ 173.328 Poisonous gases and liquids not specifically provided for.

(a) * * *

(2) Specification 3A1800, 3AA1800 or 3E1800 (§§ 178.36, 178.37, 178.42) cylinders.

(i) Specifications 3A and 3AA cylinders must not exceed 125 pounds water capacity (nominal). Cylinders must have valve protection or be packed in strong wooden or metal boxes as described in § 173.327(a)(2) of this chapter.

(ii) Specification 3E1800 cylinders must be packed in strong wooden or metal boxes.

This amendment is effective June 10, 1971. However, compliance with the regulations as amended herein is authorized immediately.

(Secs. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act (49 U.S.C. 1657); title VI, sec. 902(h), Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 1472(h)))

Issued in Washington, D.C., on January 6, 1971.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

SAM SCHNEIDER,
Board Member, for the
Federal Aviation Administration.

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[Docket No. HM-28; Amdts. 173-41, 177-15]

PART 173—SHIPPERS

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

Removal of Label Exemption

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to remove certain exemptions from the labeling requirements in § 173.402 and to make corresponding changes in § 177.815.

On July 23, 1969, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-28; Notice 69-20 (34 F.R. 12188), which proposed to remove certain exemptions from the requirements for labeling of packages containing specified classes of hazardous materials. The Board also proposed to cancel § 173.404 (h) since the provision therein is no longer necessary.

As a basis for removing the exemptions the Board said:

Carload and truckload shipments of hazardous materials, except classes A or C poisons, etiologic agents, and radioactive materials, are presently exempt from labeling requirements when such shipments are loaded by the shipper and are unloaded by the consignee from the transport vehicle in which originally loaded. In addition, carload and truckload shipments of classes A or C poisons, etiologic agents, and radioactive materials made by, for, or to the Department of Defense are presently exempt from the labeling requirements if loaded by the shipper and unloaded by the consignee from the transport vehicle in which originally loaded when accompanied by qualified personnel who are supplied with equipment to repair leaks or other container failures which will permit escape of contents.

These labeling exemptions were provided over 30 years ago for rail shipments. The exemptions were later extended to truckload shipments when transported by highway. In either case a car or motor vehicle containing carload or truckload shipments is required to be placarded or marked as prescribed for the hazardous materials contained therein. The placard (or marking) has about the same relationship to the rail car or motor vehicle as the label has to the package. Basically, the label provides precautionary information to the handler of the package and governs the loading or storage of the package while in the custody of the carrier. The placard (or marking) governs the placement of the rail car in a train, is a warning to train crews and operating personnel, and provides precautionary information to persons responding to the scene of an accident. Essentially the same type of safeguards apply to a placarded motor vehicle.

Packages of hazardous materials often are not confined within transport vehicles as a result of collisions, derailments, and overturns. These packages may or may not be intact. Persons engaged in firefighting, cleanup operations, enforcement, and the general public should be afforded sufficient warning of the potential hazards of the materials in packages. Prescribed labels on packages are a means of informing persons of the hazards involved.

There are occurrences when handling personnel, other than those employed by consignees, would come into contact with these hazardous materials even though such events are not contemplated at the time of shipment. Such occurrences as mechanical failure of transport equipment, shipments recontsigned to more than one destination and the placement of shipments temporarily in storage are not uncommon.

The Board believes that the absence of labels from certain packages of hazardous materials even when carried in carload or truckload shipments is no longer justified except for shipments of the Department of Defense which are loaded and unloaded under its supervision and which are escorted by its personnel.

The Board received comments from persons involved in one or more of five areas of interest: (1) The transportation industry; (2) manufacturers of chemicals and explosives; (3) manufacturers and distributors of compressed gases; (4) fire prevention organizations; and (5) government agencies.

Respondents from the transportation industry, government agencies (with one exception) and fire prevention agencies fully supported the proposal. The General Services Administration said, in its supporting statement, "By requiring the individual shipping containers to be labeled with the required hazardous label for the commodity at the initial point of origin or manufacture, inadvertent omission of required label(s) in further shipment of the commodity in less than car or truckload quantities would be eliminated to a substantial degree, further contributing to the safe handling of hazardous commodities in transportation."

The Military Traffic Management and Terminal Service (MTMTS) of the Department of Defense (DOD) objected to the proposal pointing out that many of its shipments are not normally escorted. MTMTS requested that DOD be exempt from labeling requirements for carload or truckload lots either with or without escorts. If not exempted, a considerable number of military items would require labels. The Board was aware that large numbers of packages not presently subject to the labeling requirements would have to be labeled in proposing to remove most of the exemptions. This included shipments by DOD since its shipments are subject to the same types of exposure during transportation. The proposal to maintain the label exemption for shipments being escorted by DOD personnel in separate vehicles is adopted. Otherwise, DOD shipments must be labeled in the same manner as those of commercial shippers, and for the same reasons.

A number of municipal fire departments and fire prevention organizations submitted comments indicating their strong support for the proposal. One fire department recommended adoption of labels as specified in the National Fire Protection Association's Pamphlet No. 704-M. The content of labels is being handled in another rule making action—Docket No. HM-8. The manufacturers of chemicals (other than compressed gases) and explosives, with one exception, indicated their support for the proposal. One manufacturer, commenting in

opposition to the proposal, said "Although we agree with the reasoning given that packages are not necessarily confined within a transport vehicle as a result of a collision, derailment, or overturn, it is highly questionable in our mind that such labeling is going to provide any additional help over and above that provided in placarding to persons engaged in firefighting, cleanup operations, enforcement, and the general public. The cost to many people to apply labels, where they are now exempt from the labeling requirements, such as those shipping cylinders and drummed products, would be extensive without sufficient benefit to the general public." The Board believes that removal of the exemption will be of benefit to the public for the reasons stated in the notice. For shipments by highway, there are occasions when trucks carry certain classes of hazardous materials in quantities of less than 1,000 pounds gross weight. In such cases, exterior markings or placarding is not required on motor vehicles. The label on a package, in many instances, will be the only communication of the potential hazard of the material it contains. The marking of the name of contents on the outside of a package, in compliance with § 173.401, will not always provide immediate communication as to the type of hazard involved. Also, as was stated in the notice, events occur that are not contemplated at the time of shipment such as reassignments, and transfers due to mechanical failure. The Board is concerned not only with events following collisions, derailments, and overturns, but with such matters as material compatibility. For example, packages of acids bearing white labels must not be loaded near packages of oxidizing materials bearing yellow labels (see §§ 174.538 and 177.848). Labels affixed to packages are one means of effecting compliance with certain of the compatibility requirements.

In general, manufacturers, distributors, and associations of the compressed gas industry indicated strong objection to the proposal. Their principal comments were: (1) The requirement would be an unnecessary duplication of decals presently employed by the industry; (2) it will place an undue burden on shippers; (3) there will be considerable additional expense incurred in shipping millions of cylinders annually; (4) no purpose will be accomplished and no benefit will be provided to the public.

Concerning the first comment, the Board does not agree that the label requirement will be an unnecessary duplication of industry decals. From a review of cylinder shipments, the Board found that cylinders usually did not bear any decal. Further, several of the decals that were observed were not legible. The use of such decals, often containing proprietary legends, are not acceptable as a substitute for the universally accepted diamond-shaped warning label of specified size and color that can be recognized from a considerable distance.

Concerning the second comment, the Board is aware that safety requirements

are often a burden. However, the Board believes that it is not an undue burden to require that packages containing hazardous materials be labeled to communicate the nature of the hazard, unless the hazard is minimized by some other means.

Concerning the third comment, the Board knows that the new safety requirements will cost money in material and labor. Of the large number of comments received, two commenters responded in detail as to cost. One commenter indicated the material and labor cost per cylinder would be approximately 2.4 cents. He indicated that the new requirement would cost his company in excess of \$200,000 per year. The other commenter estimated a cost of 2 cents per label, and an added cost to the liquefied petroleum gas industry of at least 2.8 million dollars annually. The Board has considered the cost of labeling each package of hazardous materials and believes the benefit to the public exceeds the cost.

Concerning the fourth comment, the Board has stated previously what it believes to be the purpose and benefit of the rule change. One commenter provided considerable justification with his proposal that cylinders transported by contract and private carriers be exempt from the labeling requirements. He also stated, "There is probably no container that is more suggestive of its contents or more familiar to the general public than the compressed gas cylinder. This is probably the result of ubiquitous presence of such cylinders at hospitals, building and construction sites, welding shops, auto and body shops, auto repair stations, suburban heating systems, and other locations. Indeed, so well known is the bottle configuration of the compressed gas cylinder that a picture of such a cylinder, without more, is used to represent compressed gas in the United Nations label recommendations and in Federal Aviation Administration regulations for air transportation. Moreover, the Board presently has under consideration, in Docket No. HM-8, a proposal to adopt the same method for representing compressed gas. In view of the foregoing, we are entirely confident that the absence of labels on compressed gas cylinders, when moved in private and contract carriage, would not in any manner diminish or impair the safety of such transportation or increase the hazard to emergency crews and the general public." The Board agrees with the commenter that a compressed gas cylinder itself signifies to some degree the presence of a hazard and acknowledges that the silhouette of a cylinder is being proposed for inclusion on the new label for compressed gases. The Board does not agree that by granting an exemption for all cylinders, as proposed by the commenter, the degree of the hazard will be indicated; therefore, the amendment will provide an exemption only for compressed gases classed as nonflammable when carried by private or contract motor carriers. As a further condition of the exemption, it will apply only to those cylinders that

are not overpacked so that the cylinder configuration will be readily visible in place of the communication of hazard by a warning label.

In reviewing the comments made in response to the notice, the Board believes it necessary to remind all shippers that the requirements of § 173.401(a) apply to all shipments of hazardous materials unless they are specifically exempt from the requirement. Some of the sample decals that were submitted with comments do not conform to the requirements of this section in that the commodity name, as listed in § 172.5, was not included.

Interested persons were afforded an opportunity to participate in this rule making and all comments received have been carefully considered.

In consideration of the foregoing, Parts 173 and 177 of Title 49, Code of Federal Regulations, are amended as follows:

I. Part 173 is amended as follows:

(A) In § 173.402 paragraph (c) is amended; paragraph (d) is added; and paragraph (e) is canceled, as follows:

§ 173.402 Labeling of explosives or other dangerous articles.

(c) Labels are not required on packages containing hazardous materials when the packages are—

(1) Loaded and unloaded under the supervision of Department of Defense personnel, and

(2) Under escort by Department of Defense personnel in a separate vehicle.

(d) Labels are not required on cylinders containing compressed gases classed as nonflammable, when—

(1) The cylinders are carried by private or contract motor carriers, and

(2) The cylinders are not overpacked.

(e) [Canceled]

(B) In § 173.404 paragraph (h) is canceled as follows:

§ 173.404 Labels.

(h) [Canceled]

II. Part 177 is amended as follows: In § 177.815 paragraphs (a) and (b) are amended; paragraph (c) is added, and paragraph (d) is canceled as follows:

§ 177.815 Labels.

(a) Labels prescribed in §§ 173.402 through 173.414 of this chapter must have been applied to packages by the shipper, unless exempted from the labeling requirements, the exemption being noted on the shipping papers.

(b) Labels are not required on packages containing hazardous materials when the packages are—

(1) Loaded and unloaded under the supervision of Department of Defense personnel, and

(2) Under escort by Department of Defense personnel in a separate vehicle.

(c) Labels are not required on cylinders containing compressed gases classed as nonflammable when—

- (1) The cylinders are carried by private or contract motor carriers, and
- (2) The cylinders are not overpacked.
- (d) [Canceled]

This amendment is effective June 10, 1971. However, compliance with the regulations as amended herein is authorized immediately.

(Secs. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI, sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

Issued in Washington, D.C., on December 8, 1970.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

SAM SCHNEIDER,
Board Member, for the
Federal Aviation Administration.
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Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS
[S.O. 1058]

PART 1033—CAR SERVICE

**Penn Central Transportation Co. et al.
To Unload Certain Cars of Beets
Held at Morrisville, Pa.**

At a session of the Interstate Commerce Commission Railroad Service Board, held in Washington, D.C., on the 25th day of January 1971.

It appearing, that there is a critical shortage of hopper cars throughout the country; that numerous shippers are unable to secure the hopper cars required for transportation of their traffic; that certain shippers load substantial numbers of such hopper cars far in advance of dates wanted at destination; that such cars are subsequently ordered held at origin or at various points en route to billed destination; that fourteen such cars are being held by the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees, at Morrisville, Pa., commencing with various dates between November 14, 1970, and November 29, 1970; that the Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees, has been unable to secure authority from the shipper to forward these cars to destination for unloading by the consignee; that the consignee named in the billing is unable to accept and unload these cars on a current basis; and that these practices prevent the use of the affected cars for the transportation of products of other

shippers. Therefore, it is the opinion of the Commission that, because the existing rules, regulations, and practices of the railroads are inadequate, an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1058 Service Order No. 1058.

(a) The Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees, its agents or employees, shall unload the following cars containing beets, and held at Morrisville, Pa.

PRR 668097	PRR 278747	NYC 901587
PRR 274283	PRR 674359	PRR 278439
PRR 267449	PRR 671963	PRR 249855
NYC 900795	PRR 279238	PRR 278473
PRR 673673	NYC 906281	

(b) The Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees, its agents or employees, shall complete the unloading of each of the cars named in paragraph (a) of this section not later than 11:59 p.m., February 13, 1971.

(c) The Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees, its agents or employees, shall notify the shipper and R. D. Pfahler, Chairman, Railroad Service Board, Interstate Commerce Commission, Washington, D.C., when it has completed the unloading of each car. Such notice shall specify when, where, and by whom such unloading was performed.

(d) Application: The provisions of this order shall apply to intrastate and foreign traffic, as well as to interstate traffic.

(e) Rules and regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(f) Effective date: This order shall become effective at 12:01 a.m., January 26, 1971.

(g) Expiration date: The provisions of this order shall expire at 11:59 p.m., February 13, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement, and upon the American